CHAPTER - 3

THE SECURITIES AND EXCHANGE BOARD OF INDIA

1. INTRODUCTION

The Securities and Exchange Board of India (SEBI) was constituted on 12 April 1988 as a non-statutory body through an administrative Resolution of the Government for dealing with all matters relating to development and regulation of the Securities market and investor protection and to advise the government on all these matters. SEBI was given statutory status and powers through and ordinance promulgated on January 30, 1992. SEBI was established as a statutory body on 21 February 1992. The ordinance was replaced by an Act of Parliament as 4th April 1992. The Preamble of SEBI Act, 1992 enshrines the objectives of SEBI - to protect the interest of investor in securities market and to promote the development of and to regulate the securities market. The statutory powers and functions of SEBI were strengthened through the promulgation of the Securities Laws (Amendment) Ordinance on 25th January 1995, which was subsequently replaced by an Act of Parliament.84

Before SEBI Act, 1992, the three principal Acts governing the securities market were: (a) the Capital Issues (Control) Act, 1947, which restricted issuer's access to the securities market and controlled the pricing of issues; (b) the Companies Act, 1956, which sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, and disclosures to be made in public issues; and (c) the Securities Contracts (Regulation) Act, 1956, which provides for regulation of transactions in securities through control over stock exchanges. The Capital Issues (Control) Act, 1947 had its origin during the war in 1943 when the objective was to channel resources to support the war effort. The Act was retained with some modifications as a means of controlling the raising of capital by companies and to ensure that national resources were channelled into proper lines, i.e.,

84 working paper series no. 7: Price Discovery and Volatility on NSE future Market: By M T Raju and Kiran Karnade.
for desirable purposes to serve goals and priorities of the government, and to protect the interests of investors. Under the Act, any firm wishing to issue securities had to obtain approval from the Central Government, which also determined the amount, type and price of the issue.

Major part of the liberalisation process was the repeal of the Capital Issues (Control) Act, 1947 in May 1992. With this, Government's control over issue of capital, pricing of the issues, fixing of premia and rates of interest on debentures etc. ceased. The office which administered the Act was abolished and the market was allowed to allocate resources to competing uses. However to ensure effective regulation of the market, SEBI Act, 1992 was enacted to empower SEBI with statutory powers for (a) protecting the interests of investors in securities, (b) promoting the development of the securities market, and (c) regulating the securities market. Its regulatory jurisdiction extends over corporate in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market. SEBI can specify the matters to be disclosed and the standards of disclosure required for the protection of investors in respect of issues; can issue directions to all intermediaries and other persons associated with the securities market in the interest of investors or of orderly development for securities market; and can conduct enquiries, audits and inspection of all concerned and adjudicate offences under the Act. In short, it has been given necessary autonomy and authority to regulate and develop an orderly securities market.

2. IMPORTANT DEFINITIONS UNDER THE ACT:

(1) **The Board** - Board means the Securities and Exchange Board of India established under the act. The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

This definition is analogous to section 34(2) of the Companies Act, 1956 and like a company incorporated under the Companies Act, SEBI is a body

85 “Act” means The Securities and Exchange Board of India Act, 1992
corporate but unlike a company, SEBI does not have corporators, i.e. shareholders. Apart from this attribute, SEBI has by virtue of sub section (2) of this section, all the attributes of an incorporated company or corporation, the chief one being independent legal entity. As per Companies Act, 1956, Body corporate means - Body corporate of corporation includes a company incorporated outside India but does not include -
(a) a corporation sole;
(b) a co operative society registered under any law relating to cooperative societies; and
(c) any other body corporate (not being a company as defined in this act), which the Central Government may, by notification in the official Gazette, specify in this behalf;
In State Trading Corporation Vs Commercial Tax officer (1963)\textsuperscript{86} Hidayatullah, J, defined the body corporate as: Unlike an unincorporated company, which has no separate existence and which the law does not distinguished from its members, an incorporated company has a separate existence and the law recognizes it as a legal person separate and distinct from its members. This new legal personality emerges from the moment of incorporation and from that date the persons subscribing to the memorandum of association and other persons joining as member are regarded as a body corporate or a corporation aggregate and the new person begins to function as an entity.

\textbf{(2) Collective investment scheme}\textsuperscript{87} - Any scheme or arrangement made or offered by any company under which: -
\begin{itemize}
\item[a)] the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
\item[b)] the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
\end{itemize}
\textsuperscript{86} 1963, 33 comp case 1057(SC) : AIR 1963 SC 1811,
\textsuperscript{87} Section 11 AA, Inserted by the Securities Laws (Amendment) Act, 1999, w.e.f. 22-02-2002
c) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

d) the investors do not have day to day control over the management and operation of the scheme or arrangement.

However, any scheme or arrangement shall not be a collective investment scheme -

a) which made or offered by a co-operative society registered under the cooperative societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to cooperative societies for the time being in force in any state;

b) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

c) being a contract of insurance to which the Insurance Act, 1938, applies;

d) providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;

e) under which deposits are accepted under section 58A of the Companies Act, 1956;

f) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956(1 of 1956);

g) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;

h) under which contributions made are in the nature of subscription to a mutual fund;

(3) The existing Securities and Exchange Board- means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs

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88 No.1 (44)SE/86, dated the 12th day of April, 1988;
"Securities" - Securities has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956 - as per section 2 of the SCRA, securities include-

(i) Shares, scrips, stocks, bonds, debentures, debentures stock or other marketable securities of like nature in or of any incorporated company or other body corporate;

(ii) Derivative;

(iii) Units or any other instruments issued by any collective investment scheme to the investors in such schemes;

(iv) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - As per clause 2 (zg) of SARFAESI Act, the security receipt means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;

3. FUNCTIONS OF THE BOARD

The power and functions of the board as per act are very wide and effective, which can deal the securities market in very effective manner to protect the interest of investors and shareholders. They are as follows:

Functions of Board90 - it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. These measures include:

a. regulating the business in stock exchanges and any other securities markets;

b. registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio

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90 Chapter IV of the SEBI Act, 1992 deals with the powers and functions of the Board.
90 Section 11 of the SEBI act, 1992
managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
c. registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;
d. registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
e. promoting and regulating self-regulatory organizations;
f. promoting investors’ education and training of intermediaries of securities markets;
g. prohibiting insider trading in securities;
h. regulating substantial acquisition of shares and take-over of companies in the securities market;
i. calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;
j. performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 as may be delegated to it by the Central Government;
k. levying fees or other charges for carrying out the purposes of this section;
l. conducting research for the above purposes;
m. calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;
n. Performing such other functions as may be prescribed.
o. the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a
public company (not being intermediaries referred to in section 12 of the act) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

In the case of Virendra Bansal Vs. Securities and Exchange Board of India & Another The Hon’ble High court of Gujrat has held that as a cumulative effect of the aforesaid facts and circumstances of the case and the judicial pronouncements, the Scheme floated by SEBI viz. SEBI (Interest Liability and Regularization) Scheme 2004 is absolutely true, correct and legal in consonance with the Act, 1992. Likewise, the calculation of registration fees, adopted by SEBI in absence of break up turnover and in absence of Auditor’s report before the cut off date, is true, correct, legal and in consonance with the Act, 1992 and Regulations, 1992. The Court cannot extend the benefit of the Scheme after the cut off date, especially in the facts of the present case, when enough extensions have been given by SEBI and whereby a large number of stock-brokers of Ahmedabad Stock Exchange have already availed the benefit of the Scheme. The cut off date is a integral part of the benefit under the Scheme. Cut off date, in facts of this case is not an arbitrary. The concession and conditions of the regularization Scheme cannot be segregated. It is a matter of Government policy that what to give as a concession for, what is to be achieved promptly, without keeping the open ended policy. The Scheme is optional. It is in consonance with the Act, 1992 and Regulations, 1992.

For the reasons stated herein above, the petitions fail. In all the Special Civil Applications Rule is discharged with no order as to costs. Interim relief granted, earlier, is vacated.

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91 Special Civil Application No. 1396/04, 14328/04, 14328/04, 14351/04, 14355/04, 14650/04, 14641/04, 14631/04, 1518.
4. POWERS OF THE SEBI BOARD – the board has been assigned with following power:

4.1 Power of Civil court\(^{92}\) - For carrying out the duties assigned to it under the act, the SEBI has been vested with the powers as are available to a Civil Court under the Code of Civil Procedure Code, 1908 for trying a suit in respect of following matters:

i. the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

ii. summoning and enforcing the attendance of persons and examining them on oath;

iii. inspection of any books, registers and other documents of any person referred to in section 12, at any place;

iv. inspection of any book, or register, or other document or record of the company;

v. issuing commissions for the examination of witnesses or documents.

4.2 Powers to suspend and restrain\(^{93}\) - the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry\(^{94}\), namely:-

a) suspend the trading of any security in a recognised stock exchange;

b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

\(^{92}\) Section 11 (3) of the SEBI Act, 1992

\(^{93}\) Section 11(4) of the SEBI Act, 1992

\(^{94}\) Substituted for clause (i) of sub section (2) by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002
e) attach, after passing of an order on an application made for approval by
the Judicial Magistrate of the first class having jurisdiction, for a period
not exceeding one month, one or more bank account or accounts of any
intermediary or any person associated with the securities market in any
manner involved in violation of any of the provisions of this Act, or the
rules or the regulations made thereunder:
However, only the bank account or accounts or any transaction
entered therein, so far as it relates to the proceeds actually involved in
violation of any of the provisions of this Act, or the rules or the
regulations made thereunder shall be allowed to be attached;
(f) direct any intermediary or any person associated with the securities
market in any manner not to dispose of or alienate an asset forming
part of any transaction which is under investigation. The board may,
take any of the measures specified in clause (d) or clause (e) or clause
(f), in respect of any listed public company or a public company95
which intends to get its securities listed on any recognised stock
exchange where the Board has reasonable grounds to believe that such
company has been indulging in insider trading or fraudulent and unfair
trade practices relating to securities market. Further more the Board
shall, either before or after passing such orders, give an opportunity of
hearing to such intermediaries or persons concerned.

4.3 Powers to regulate or prohibit issue of prospectus, offer document or
advertisement soliciting money for issue of securities96.
The Board may for the protection of investors for (i) the matters relating
to issue of capital, transfer of securities and other matters incidental
thereto; and (ii) the manner in which such matters shall be disclosed by the
companies. The Board may by general or special orders prohibit any
company from issuing prospectus, any offer document, or advertisement
soliciting money from the public for the issue of securities. The board may
also specify the conditions subject to which the prospectus, such offer
document or advertisement, if not prohibited, may be issued. It may

95 not being intermediaries referred to in section 12
96 section 11A (1) of the SEBI Act, 1992
specify the requirements for listing and transfer of securities and other matters incidental thereto.

4.4 Power to issue directions⁹⁷.

If after making enquiry, the Board is satisfied that it is necessary in the interest of investors, or orderly development of securities market. Or to prevent the affairs of any intermediary or other persons referred to in section 12 (stock broker, sub broker, share transfer agents etc.) being conducted in a manner detrimental to the interest of investors or securities market. Or to secure the proper management of any such intermediary or person. It may issue such directions-

a. to any person or class of persons referred to in section 12, or associated with the securities market; or

b. to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market

In the matter of Securities and Exchange Board of IndiaVs. Ajay Agarwal⁹⁸, there was alleged misstatement of facts in prospectus of company and misleading investors. Restraint order from accessing securities market (Power of SEBI to issue directions — Section 11B of the Securities and Exchange Board of India Act, 1992 ) While using powers the SEBI restrained Director of Company from accessing securities market on prima facie case that facts were misstated in the prospectus of the company during public issue of shares and therefore, investors were misguided. The Appellate Board ruled in favour of Respondent on ground that provision of Section 11B cannot be invoked in respect of the alleged misconduct which took place at a point of time when Section 11B was not on the statute book. The issue was whether Section 11B of the Securities and Exchange Board of India Act, 1992 could be invoked by the Chairman of the in conjunction with Sections 4(3) and 11 for restraining the Respondent. The Supreme Court has held that Provisions of Section 11B being procedural in nature can be applied retrospectively. Even if the law

⁹⁷ Section 11(B) of the SEBI Act, 1992
⁹⁸ MANU/SC/0137/ 2010
applies prospectively, the Board cannot be prevented from acting in terms of the law which exists on the day the Board passed its order.

The High Court of Bombay has decided in favour of powers exercised by board under SEBI Act, in the matter of Banhem Securities Pvt. Ltd Vs National Stock Exchange & ors\(^9\). The brief facts of the matter are:- The challenge in this petition is to the circular issued by the SEBI Board dated 9.7.1999, the relevant portion of which reads thus :“The Stock Exchange should on receipt of the arbitration award, debit the amount of the arbitration award from the security deposit or any other monies of the member (against whom an award has been passed) and keep the amount in a separate account. Thereafter, a confirmation may be obtained from the concerned member that he has not filed any appeal within the stipulated time under section 34 of the Arbitration and Conciliation Act, and only then the payment may be made to the awardee. If an appeal is filed and the same is pending in a Court of law, the amount so kept in the separate account be paid to the awardee in accordance with the court orders.

At the time of debiting the amount, the Stock Exchange may if so desire inform him that the Exchange will not be liable for loss of interest, business etc in case the award is modified by the Court. The Exchange may also indicate that if any amount of interest is still payable to the awardee e.g. from the date of debiting the member’s account till the date of payment of the award amount to the awardee, the same be recoverable from the concerned member and the Stock Exchange shall not be liable in this regard.”

The validity of the circular is assailed mainly on the ground that it is contrary to the provisions of section 36 of the Arbitration and Conciliation Act, 1996. Section 36 lays down that where time prescribed under section 34 to set aside the award has expired and no application is made therefrom or if it is made, it has been refused, then the award would become enforceable as a decree under the provisions of the C.P.C. It further provides that if application is made, then till the application is refused the award does not become enforceable as a

\(^9\) the Writ Petition Lodging No. 168 of 2002, dated 23.1.2002
decree and such enforceability is postponed till the application for setting aside the award under section 34 is decided. The contention is that if the award is not enforceable under the provisions of the said Act, it cannot be made executable by virtue of the administrative instructions issued by the SEBI. It is also contended that the impugned circular makes provision for deposit only in the case where the award is passed in favour of the constituent and against a broker but does not make any provision where the award is passed in favour of a broker and against the constituent. Therefore it is contended that the circular is violative of Article 14 of the Constitution. It is contended that in any event once award is set aside then the amount with accrued interest is liable to be refunded. The circular, however, provides only for refund of the principal amount.

The Hon’ble High court held that - In our opinion the challenge to the impugned circular is without any substance. The circular has been issued by the SEBI Board in exercise of powers under section 11 and 11B of the SEBI Act in order to protect interest of the investors. It has been brought to the notice of the SEBI Board that arbitration awards passed in favour of the clients / investors are not implemented and the Stock Exchanges are unable to take appropriate action in order to ensure implementation of the awards. In our opinion the decision taken by the SEBI is in the right direction. It helps to protect the investors. The circular issued by the SEBI is confined to members / brokers of the Stock Exchanges and there is no question of the circular being contrary to the provisions of section 36 or any other provisions of the Arbitration and Conciliation Act, 1996. We do not find any illegality or arbitrariness in the circular. Petition is dismissed

The High court of Calcutta has also given order in the case of in the matter of Raj Kumar Kishorepuri Vs General Manager, Securities & Exchange Board of India & Ors. The brief facts of the matter - The petitioner in this writ petition is aggrieved by the notice issued by the General Manager, Securities and Exchange Board of India dated August 26th, 2004. By the notice he was asked to show cause why proceedings should not be initiated against him.

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100 W. P. No. 1933 of 2004, Judgment on : March 23rd, 2005 ( www.sebi.gov.in)
under the Securities and Exchange Board of India Act, 1992, s.11B, read with the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, regn.12, and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, regn.11, for the role he played in the process of irregular allotment of preferential shares by a Padmini Technologies Ltd. in the year 1999.

Section 30 of the Securities and Exchange Board of India Act, 1992 empowered the board to make regulations for carrying out the purposes of the Act. In exercise of such power it first made the 1995 regulations, which were repealed by the 2003 regulations (now in force), providing by their regn. 13 that notwithstanding the repeal violations of provisions of the repealed regulations shall be investigated and proceeded against, and any investigation pending, at the date of their commencement, shall be continued and disposed of, according to the procedure laid down in them.

Counsel for the petitioner argues that provisions of regn. 12 of the repealed regulations and regulation 11 of the new regulations, both being substantive provisions of law, as opposed to procedural ones, while, in view of provisions of regn.13 of the new regulations, the board is empowered to follow the procedural provisions of the new regulations for concluding the pending investigations, it does not possess the power to take any action against or punish the petitioner under regn. 11 of the new regulations, though, if occasion arises, it can do so under regn. 12 of the repealed regulations.

Counsel for the respondents argues that since sub-regns. 2 & 3 of regn. 13 begin with non obstante clauses, even for the violations of provisions of the repealed regulations by the petitioner, the board would be empowered to take action in terms of regn. 11 of the new regulations. She refers me to passages from treatise and the decisions in : Union of India & Anr. v. G. M. Kokil & Ors\(^\text{101}\), Chandavarkar Sita Ratna Rao v. Ashalata S. Guram\(^\text{102}\), Narcotics

\(^{101}\text{(AIR 1984 SC 1022)}\)
It is apparent from the impugned post investigation show cause notice that the board contemplated actions against the petitioner under s.11B, which empowers it to issue all or any of the directions specified in regn.11 of the new regulations. I say so, because s.11B confers power on the board to issue such directions as may be appropriate in the interests of investors in securities and securities market. Therefore, to my mind, in any case, the petitioner cannot say that the measures mentioned in regn.11 cannot be taken against him, if there are good and sufficient reasons for taking any of them. For these reasons I conclude that there being no merit in the sole contention raised to challenge the show cause notice, the writ petition is liable to be dismissed; and accordingly I dismiss it.

4.5 Power to investigate

Where the Board has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board, it may, at any time by order in writing, direct any person specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

It shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the

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102 (AIR 1987 SC 117)
103 (AIR 1991 SC 558)
104 (AIR 1991 SC 672).
105 section 11 (C) of the SEBI Act, 1992
106 Investigating authority
company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

The Investigating Authority may keep in its custody any books, registers, other documents and record produced for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced, provided that the Investigating Authority may call for any book, register, other document and record if they are needed again. If the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

Any person, directed to make an investigation may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

If any person fails without reasonable cause or refuses to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty to produce or to furnish any information which is his duty to furnish or to appear before the Investigating authority personally when required to do so or to answer any question which is put to him by the Investigating Authority or to sign the notes of any examination, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one
crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues. Notes of any examination shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record. After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept to search that place or those places in the manner specified in the order and to seize books, registers, other documents and record, it considers necessary for the purposes of the investigation. However, the Magistrate shall not authorise seizure of books, registers, other documents and record, of any listed public company or a public company\(^\text{107}\) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return: Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof. Every search or seizure made

\(^{107}\) not being the intermediaries specified under section 12 of the SEBI Act, 1992
under this section shall be carried out in accordance with the provisions of the
Code of Criminal Procedure, 1973, relating to searches or seizures made under
that Code.

In the case of K. Venkateswarlu Vs The Regional Manager, SEBI & Anr.108
The Hon’ble High court of Delhi has decided the matter to issue writ of
mandamus or not to SEBI to take action on the complaint of customer and writ
petition is in the nature of PIL-

Brief facts of the matter- This Writ Petition has been filed under Article 226 of
the Constitution of India by the Petitioner making following prayers:

a. issue a writ of mandamus or any other appropriate writ
directing the Respondent no. 1 to conduct an enquiry regarding
the Price manipulation/insider trading of the Respondent No. 2
scrip during the said period.

b. direct the Respondent No. 1 to file a report on the subject in
this Hon'ble Court for further directions.

c. pass such any other or further order/direction as this Hon'ble
Court may deem fit and proper in the facts and circumstances
of the case.

2. The Petitioner has stated that he was a small investor in the shares and the
price of scrip of Respondent No. 2 company fluctuated vigorously first upward
and then downward. The Petitioner had purchased 3000 shares of respondent
no. 2 company @ Rs.476.34 and had to sell it @ Rs.454.52 thus incurring a
loss of Rs.65,451.20. He made complaint to SEBI (Respondent No. 1)
bringing it to the notice of SEBI that there was 'inside trading' and
manipulation of price of scrip of Respondent No. 2 company but SEBI took no
action and hence this Writ Petition.

3. This Court observed as under: Those, who deal in stock market and
purchase shares as a mode of investment, know very well that stock market is
sometime in the grip of bulls and sometime in the grip of bears. Recent trend
in the stock market has shown that the stock prices do not reflect the real value
of the share and hike and fall in the price of the share takes place due to
several factors like sudden interest of the foreign investors into Indian Stock

Market or sudden fall in the stock market world over. *SEBI* is a specialized body constituted under the Act, which takes care of different regulations meant for stock market. SEBI is supposed to know when and where the investigation is to be done by it. This Court on the prayer of individual shareholder because of fall in price of his shares cannot give directions to SEBI to conduct investigations either itself or through CBI. It is surprising that the petitioner had come when share price of his share has fallen. He must be earning profits when share prices went up by the same process which the petitioner is alleging was responsible for fall in the share price and petitioner did not approach the Court at that time, although, petitioner is stated to be dealing in shares for the last ten years. When you suffer losses you suddenly feel that there is some manipulation and when you gain profits, the same feeling is not there. Moreover this petition is in the nature of PIL. This Court cannot entertain PILs. I consider that the petition is not maintainable and is hereby dismissed.

### 4.6 Power to issue Cease and desists proceeding\(^{109}\)

If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation: Provided that the Board shall not pass such order in respect of any listed public company or a public company which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

### 4.7 Regulation of Intermediaries\(^{110}\) : Registration of Stock Broker, Sub Broker, Share Transfer Agents. There are number of intermediaries which are associated with securities market in buying, selling and otherwise dealing in securities such as :-

(i) stock-broker,

(ii) sub-broker,

(iii) share transfer agent,

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\(^{109}\) Section 11 D of the SEBI Act, 1992

\(^{110}\) Chapter V registration certificate : the SEBI Act, 1992
As per section 12 (1) of the act :- No stock-broker, sub- broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act: Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

If any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

Section 12 (1A) of the act prescribes that no depository, participant, custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of

111 Inserted by Depositories Act, 1996, w.e.f. 20-09-1995
registration obtained from the Board in accordance with the regulations made under this Act. If a person buying or selling securities or otherwise dealing with the securities market as a depository, participant, custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the securities market until such time regulations are made under clause (d) of sub-section (2) of section 30.

Section 12 (1B) prescribe that No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations. If any person sponsoring or causing to be sponsored, carrying on or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30. Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations\textsuperscript{112}.

4.8 Power to Cancel Certificate\textsuperscript{113}: the Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations. However as per proviso of this section, no order under this subsection shall be made unless the person concerned has been given a reasonable opportunity of being heard.

According to this section SEBI is empowered to suspend or cancel a certificate of registration granted by it. However, this should be done as per principle of natural justice and requires a reasonable opportunity of being heard to such person. Moreover, any order passed by SEBI under this sub section would affect vital rights of the concerned person, so, the order must be a speaking or

\textsuperscript{112} Section 12 (2) of the Sebi Act, 1992  
\textsuperscript{113} Section 12 (3) of the SEBI Act, 1992
reasoned order notwithstanding the fact that the SEBI is not a judicial or a quasi Judicial body. In S N Mukherjee Vs Union of India\textsuperscript{114} the Supreme Court has held that in view of the expanding horizon of the principle of natural justice, the requirement to record reasons can be regarded as one of the principle of natural justice which governs exercise of power by administrative authorities.

In another case, in The Securities Exchange Board of India Vs Saikala Associates Ltd.\textsuperscript{115} the apex court was considering an appeal filed by SEBI challenging the order passed by the Tribunal overturning the order earlier passed by SEBI against broker for violation of the provisions of section 12(1) read with rule 3, the 1992 rules. After considering the rival submissions, the only question before the apex court was, Whether Tribunal has power to modify the penalty imposed by SEBI? The Supreme court observed that, the position of Broker / sub broker in case of violation was statutorily provided under section 12 of the Act, which has to be read with rule 3 of the rules. The apex court further observed that, no power has been conferred on the Tribunal to travel beyond the areas covered by section 12 ad rule 3 ad concluded that when something was to be done statutorily in a particular way, it can be done only in that way and there was no scope for taking shelter under a discretionary power. Accordingly, the order of the Tribunal was set aside and the order passed by SEBI was restored.

Hence the Supreme Court has settled the issue that in case where even the manner of statutory penalty is provided by law then the tribunal has no option but to follow the law and it cannot change the penalty by taking recourse to the plea that it has discretionary power under the act.

4.9 Powers to Prohibit the Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control\textsuperscript{116}

According to Section 12 A of the act, no person shall directly or indirectly –

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange,

\textsuperscript{114} AIR 1990 SC 1984,
\textsuperscript{116} Chapter V A of the SEBI Act, 1992
any manipulative or deceptive device or contrivance in contravention of
the provisions of this Act or the rules or the regulations made there under;
(b) employ any device, scheme or artifice to defraud in connection with issue
or dealing in securities which are listed or proposed to be listed on a
recognised stock exchange;
(c) engage in any act, practice, course of business which operates or would
operate as fraud or deceit upon any person, in connection with the issue,
dealing in securities which are listed or proposed to be listed on a
recognised stock exchange, in contravention of the provisions of this Act
or the rules or the regulations made thereunder;
(d) engage in insider trading;
(e) deal in securities while in possession of material or non-public information
or communicate such material or non-public information to any other
person, in a manner which is in contravention of the provisions of this Act
or the rules or the regulations made thereunder;
(f) acquire control of any company or securities more than the percentage of
equity share capital of a company whose securities are listed or proposed
to be listed on a recognised stock exchange in contravention of the
regulations made under this Act.

4.10 Powers to impose Penalties and Adjudication
Chapter VI of the SEBI Act, 1992 contains Section 15A to Section 15 JA
which deals with penalties which can be imposed under the Act for various
failures, defaulters, non disclosures and other offences.

4.10.1 Penalties For Failures, Disclosures Etc\(^\text{117}\) - if any person, who is
required under this Act or any rules or regulations made thereunder –
(a) to furnish any document, return or report to the Board, fails to furnish the
same, he shall be liable to a penalty of one lakh rupees for each day during
which such failure continues or one crore rupees, whichever is less;
(b) to file any return or furnish any information, books or other documents
within the time specified therefore in the regulations, fails to file return or

\(^{117}\) Section 15 A of the SEBI Act, 1992
furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
(c) to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

4.10.2 Penalties for failure by any person to enter into agreement with clients\(^{118}\) - if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

4.10.3 Penalties for failure to redress investor’s grievances\(^{119}\) - if any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

4.10.4 Penalty for certain defaults in case of mutual funds\(^{120}\) - Section 15 D and 15 F of the act provide for penalties if any person, who is –
(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or

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\(^{118}\) Section 15 B of the SEBI Act, 1992
\(^{119}\) Section 15 C of the SEBI Act, 1992
\(^{120}\) Section 15 D and 15 F of the SEBI Act, 1992
carries on any such collective investment scheme including mutual funds, or one crore rupees, whichever is less.

(b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(c) registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(d) registered as a collective investment scheme including mutual funds fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such dispatch, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(g) If any person, who is registered as a stock broker under this Act fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker;

(h) If any person fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the
regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. 

(i) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty of one lakh rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

4.10.5 Penalty for failure to observe rules and regulations by an asset management company121.- where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

4.10.6 Penalty for insider trading122.- If any insider who either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

4.10.7 Penalty for non-disclosure of acquisition of shares and takeovers123.- if any person, who is required under this Act or any rules or regulations made thereunder, fails to -

121 Section 15 E of the SEBI Act, 1992
122 Section 15 G of the SEBI Act, 1992
123 Section 15 H of the Sebi Act, 1992
i. Disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

ii. Make a public announcement to acquire shares at a minimum price;

iii. Make a public offer by sending letter of offer to the shareholders of the concerned company; or

iv. Make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

**4.10.8 Penalty for fraudulent and unfair trade practices**¹²⁴ - if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

**4.10.9 Penalty for contravention where no separate penalty has been provided**¹²⁵ - whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

In the case of The Securities & Exchange Board of India Vs. Cabot International Capital Corporation¹²⁶, the Bombay High Court decided the matter. The main issue decided by the court, whether mens rea is sine qua non, for imposing penalty for breach of the provisions of the SEBI Act and the Regulations thereunder, apart from the discretion, exercisable by the adjudicating authority. The respondents – Cabot International Capital Corporation (for short referred as “CICC”). Cabot India Limited (for short “CIL”) is a company incorporated under the Companies Act 1956. CIL was

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¹²⁴ Section 15 HA of the SEBI Act, 1992
¹²⁵ Section 15 HB of the SEBI Act, 1992
listed in Bombay Stock Exchange on 16th December, 1996. CICC, the foreign
collaboration of the CIL, held 51% of paid up capital of the CIL. After the
Board Meeting of the CIL dated 24th December, 1996, the Board of Directors
approved the recommendations for the Preferential Issue to the members and
shareholders of the CIL and accordingly, Extraordinary General meeting was
convened and conducted on January 23, 1997, which was duly notified to the

By Certificate dated 14th January, 1997, M/s. S.R. Batliboi & Associates,
Chartered Accountants, being the statutory Auditors of the CIL, addressed a
certificate to the SEBI and the Reserve Bank of India (for short “RBI”) and it
was confirmed that the Preferential Issue could be made by the CIL at a price,
less than Rs.121/- per share. This was done in accordance with the provisions
of the SEBI Guidelines for Preferential Allotment dated 4th August, 1994 and
the RBI Guidelines determining issuing price of preferential shares, dated 3rd
June, 1994, regarding approval for raising foreign equity in existing
Companies. From 4th November, 1994, SEBI (Substantial Acquisition of
Shares & Takeovers) Regulations 1994 (for short “SEBI Takeover
Regulations, 1994”) were in force till 22nd February 1997.

Sometime in November, 1998, appellants raised query and pointed out that the
SEBI Takeover Regulations 1997, were applicable and the respondents were
under an obligation to file a Report under Regulation 3(4) of the SEBI
Takeover Regulations 1997. The respondents (CICC), by its letter dated 3rd
December, 1998, replied that basic formalities had been complied with, before
the SEBI Takeover Regulations 1997 came into force. Respondents (CICC),
also expressed that they understood that it was not necessary to submit a
Report and, therefore, its non compliances with those requirements were
unintentional. The respondents, however, submitted the requisite Report by its
letter, dated 3rd December, 1998. The appellants had accepted the said Report
which was filed admittedly, beyond 529 days. The Report ought to have been
filed on 22nd June, 1997. The appellants, on 7th December, 1998, by a
reasoned order, granted exemption to the (CICC) respondents form making a
public offer for a minimum of 20% of the CIL and granted the permission to
make a public offer for the acquisition of 14% of the shares in the CIL, as per
the then applicable SEBI Takeover Regulations, 1997. The actual allotment of
acquisition took place on 4th March, 1997, after 20.2.1997 i.e. effective date of the SEBI Takeover Regulations, 1997.

The Adjudicating officer had been appointed by the appellants by the orders dated 30th September, 1999 and 10th December, 1999, to conduct an inquiry into the matter, pursuant to Section 15I read with the SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. The appellants, pursuant to Section 15(A) 15H of the SEBI Act, read with regulation 3(4), 11 of the SEBI Takeover Regulations 1997, issued show cause notice to conduct an inquiry into the alleged contraventions by the respondents, in the matter of acquisition of said Preferential Shares in the year 1997. The said show cause notice dated 8th February, 2000 was duly received and replied by the respondents, and submissions were sent by letter dated 7th March, 2000 and 8th August, 2000. The matter was heard by the Adjudicating Officer on 15th April, 2000, 19th April, 2000 and 2nd May, 2000 and after hearing both the parties, considering the material and evidence on the record including then existing provisions, levied a restricted, lumpsum penalty of Rs.1,50,000/- on the respondents. No penalty was levied on the respondents for the breach of Section 15H (ii) of the SEBI Act.

The SAT, after hearing both the parties, by its order dated 25th January, 2001, allowed the appeal of the respondents and held that the order imposing penalty on the respondents was unsustainable and same was set aside, as the company has no mala fide intention in case in hand. The appellants – SEBI, therefore, preferred the present Appeal No.7 of 2001, under Section 15Z of the SEBI Act, on 23rd March, 2001.

The Court after heard both parties held that we are not in agreement with the Appellate Authority in respect of the reasoning given in regard to the necessity of mens rea being essential for imposing the penalty. According to court, **mens rea is not essential for imposing civil penalties under the SEBI Act and Regulations.** Therefore, the court disposed of the Appeal by the order that the reasoning of the SAT that mens rea or guilty mind of the contravenor is required to be alleged and proved by the appellants-SEBI for imposing of the penalty for breaches and default of the provisions of the SEBI Act and its Regulations, is set aside.
The provisions of sections 15A to 15HB are explained in the given below table:

<table>
<thead>
<tr>
<th>Section</th>
<th>Default</th>
<th>Maximum Penalties (Rs.)</th>
<th>Person liable</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 A (a)</td>
<td>Failure to furnish any document, return or report to SEBI when required under the Act, rules or regulations</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Whoever commits the failure</td>
</tr>
<tr>
<td>15 A (b)</td>
<td>Failure to file any return or furnish any information, books or other document within the tie prescribed under the regulations</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Whoever commits the failure</td>
</tr>
<tr>
<td>15 A (c)</td>
<td>Failure to maintain books of account or record</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Whoever commits the failure</td>
</tr>
<tr>
<td>15B</td>
<td>Failure by any intermediary to enter into any agreement with his client</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>The intermediary who is required under the Act, rules or regulations to enter into such agreement but who fails to do so</td>
</tr>
<tr>
<td>15 C</td>
<td>Failure by listed company or an intermediary to redress grievances of the investors</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>The intermediary who is required under the Act, rules or regulations to enter into such agreement but who fails to do so</td>
</tr>
<tr>
<td>15 D (a)</td>
<td>Failure to obtain from SEBI a certificate of registration for sponsoring or carrying on any collective investment scheme including mutual fund</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Whoever commits the failure</td>
</tr>
<tr>
<td>15 D (b)</td>
<td>Failure to comply with the terms and conditions of</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Any registered collective</td>
</tr>
<tr>
<td>15 D (c)</td>
<td>Failure to make an application for listing of a collective investment scheme as provided for in the concerned regulations</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Any registered collective investment scheme, including mutual fund committing the default</td>
</tr>
<tr>
<td>15 D (d)</td>
<td>Failure to dispatch unit certificates to the holder of the units under any collective investment scheme, including mutual fund in the manner provided for in the concerned regulations</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Any registered collective investment scheme, including mutual fund committing the default</td>
</tr>
<tr>
<td>15 D (e)</td>
<td>Failure to refund application monies to the investors within the prescribed period</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Any registered collective investment scheme, including mutual fund committing the default</td>
</tr>
<tr>
<td>15 D (f)</td>
<td>Failure to invest money collected in the manner or within the period prescribed by the concerned regulations</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>Any registered collective investment scheme, including mutual fund committing the default</td>
</tr>
<tr>
<td>15 E</td>
<td>Failure by an asset management company of a mutual fund to comply with any regulations governing its activities</td>
<td>100000 per day of default or Rs. 1 cr, whichever is less</td>
<td>The asset management company committing the default</td>
</tr>
<tr>
<td>15 F (a)</td>
<td>Failure by a registered stockbroker to issue contract notes in the form</td>
<td>Five times of the amount for which the contract note</td>
<td>The stockbroker committing the default</td>
</tr>
</tbody>
</table>
and manner specified by the stock exchange was required to be issued default

| 15 F (b) | Failure by any registered stock broker to deliver to the investor any security or make payment of the amount due to him | 100000 per day of default or Rs. 1 cr, whichever is less | The stock broker committing the default |
| 15 F (c) | Charging by any registered stock broker, brokerage in excess of the rate prescribed by the regulations. | 100000/- or 5 times of the excess brokerage charged, whichever is higher | The stock broker committing the default |
| 15 G (i)* | Dealing by an insider either on his own behalf or on behalf of any other person in securities of a body corporate on any stock exchange on the basis of any unpublished information | Upto Rs. 25 crore insider or 3 times the amount of profits made whichever is higher | The concerned |
| 15 G (ii)* | Communicating by an insider, any unpublished price sensitive information to any person with or without his request for such information except as required in the ordinary course of business or as required by law. | Upto Rs. 25 crore insider or 3 times the amount of profits made whichever is higher | The concerned |
| 15 G (iii)* | Counseling, or procuring by an insider, any other person to deal in securities of any body corporate on the basis of any unpublished price sensitive information | Rs 25 crore or 3 times the amount of profits made whichever is higher | The concerned insider |
| 15 H (ii)# | Failure to disclose the aggregate of shareholding in a body corporate before he acquired any shares in the body corporate | Rs 25 crore or 3 times the amount of profits made whichever is higher | The person who is required under the Act, rules or regulations to make such disclosure |
| 15 H (ii)# | Failure to making a public announcement to acquire share at a minimum price | Rs 25 crore or 3 times the amount of profits made whichever is higher | The person is required under the Act, regulations to make a public |
| 15 H (iii)# | Failure to make a public offer by sending letter of offer to the shareholders of the concerned company | Rs 25 crore or 3 times the amount of profits made whichever is higher | The person who is required under the Act, rules or regulations to make a public offer |
| 15 H (iv)# | Failure to make payment of consideration to the shareholder who sold their share pursuant to letter of offer | Rs 25 crore or 3 times the amount of profits made whichever is higher | The person who is required under the Act, rules or regulations to make payment of consideration to shareholders who sold their shares |
| 15 H A | Indulges in fraudulent and unfair trade practices | Rs 25 crore or 3 times the amount of profits made whichever is higher | Any person who indulges in fraudulent and unfair trade practices |
| 15 H B | Failure to comply with any provisions of the act, rules regulations or directions where no separate penalty is provided | Upto Rs. 1 crore | Any person contravening |

*The penalty leviable under sections 15 G (i), (ii), and (iii) pertains to defaults under the SEBI (Insider trading) Regulations, 1992.
# The penalty leviable under section 15 H (i) to (iv) pertains to default under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994.

4.11 Power to Adjudicate

For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB, the Board shall appoint any of its officers not below the rank of a Division Chief to be an adjudicating officer for holding an

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127 Section 15 I of the SEBI Act, 1992
inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

During adjudging quantum of penalty mentioned as above, the adjudicating officer shall have due regard to the following factors, namely:
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

4.13 Power To Make Regulations:- Section 30 of the act empowers the SEBI to make regulations to carry out the purposes of the act and every regulation must be made and published as a notification in the Gazette. Such regulations may provide for all or any of the following matters, namely:-
(a) the times and places of meetings of the Board and the procedure to be followed at such meetings including quorum necessary for the transaction of business;
(b) the terms and other conditions of service of officers and employees of the Board;

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128 Section 15JA of the SEBI Act, 1992, (substituted for “by the SEBI (Amendment) Act, 2002 w.e.f. 29-10-2002”)
129 Section 30 of the SEBI Act, 1992
130 “with the previous approval of the Central Government” omitted by Securities Laws (Amendment) Act, 1995 w.e.f.25-01-1995)
c. the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;
d. the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12.

Every rule and regulation made under this act shall be laid before each House of Parliament. If houses modify in rule and regulation, that should be modified accordingly. The Board has notified following regulations consistent with this act and the rules made thereunder to carry out the purposes of this Act:

<table>
<thead>
<tr>
<th>Date</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb 22, 2011</td>
<td>Securities and Exchange Board Of India (Credit Rating Agencies ) Regulations, 1999, as amended upto March 19, 2010</td>
</tr>
<tr>
<td>Dec 21, 2010</td>
<td>SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2010</td>
</tr>
<tr>
<td>Dec 10, 2010</td>
<td>Notification under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Market) Regulations, 2007</td>
</tr>
<tr>
<td>Nov 12, 2010</td>
<td>Notification of the SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2010</td>
</tr>
<tr>
<td>Jul 29, 2010</td>
<td>Securities and Exchange Board Of India (Mutual Funds) (Amendment) Regulations, 2010</td>
</tr>
</tbody>
</table>

131 Section 31 of the SEBI Act, 1992
<table>
<thead>
<tr>
<th>Date</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Apr 13, 2010</strong></td>
<td>Securities and Exchange Board of India (Foreign Institutional Investors) (Amendment) Regulations, 2010</td>
</tr>
<tr>
<td></td>
<td>Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements)(Third Amendment) Regulations, 2010</td>
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Aug 11, 2008  Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2008
Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations 2008

Aug 08, 2008  Securities And Exchange Board Of India (Depositories And Participants)(Second Amendment) Regulations 2008


May 26, 2008  SEBI (Intermediaries) Regulations, 2008
SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008

May 22, 2008  Securities And Exchange Board Of India (Foreign Institutional Investors) (Amendment) Regulations, 2008
Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2008

Apr 16, 2008  Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2008

Apr 08, 2008  Notification under sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2007 and regulation 2 of the Securities and Exchange Board of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2007

Mar 31, 2008  Notification under clause (u) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SEBI (Payment of Fees) (Amendment) Regulations, 2008

Mar 17, 2008  Securities And Exchange Board Of India (Depositories And Participants) (Amendment) Regulations 2008

Dec 31, 2007  Securities And Exchange Board Of India (Foreign Institutional Investors) (Second Amendment) Regulations, 2007

Oct 31, 2007  Securities And Exchange Board Of India (Mutual Funds) (Second Amendment) Regulations, 2007

Oct 17, 2007  SEBI (Certification Of Associated Persons In The Securities Markets) Regulations, 2007

Oct 10, 2007  Securities And Exchange Board Of India (Depositories And Participants) (Amendment) Regulations 2007

May 29, 2007  SEBI (Buy-back of Securities) (Amendment) Regulations, 2007
SEBI (Merchant Bankers) (Amendment) Regulations, 2007
Securities And Exchange Board Of India (Mutual Funds) (Amendment) Regulations, 2007
Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) (Amendment) Regulations, 2007

Apr 23, 2007  SEBI (Manner of Service of Summons and Notices issued by the Board) (Amendment) Regulations, 2007

Jan 08, 2007  Securities and Exchange Board of India (Foreign Institutional Investors) Amendment) Regulations, 2007

Jan 03, 2007  Notification repealing the SEBI (Central Listing Authority) Regulations, 2003

Dec 14, 2006  SEBI (Regulatory Fee On Stock Exchanges) Regulations, 2006

Nov 30, 2006  Securities And Exchange Board Of India (Portfolio Managers) (Third
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Jul 04, 2003  The Securities and Exchange Board of India (Debenture Trustees)(Amendment) Regulations, 2003

Dec 10, 2002  Securities and Exchange Board of India (Underwriters)(Amendment) Regulations 2002

Sep 27, 2002  SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002 [since repealed w.e.f May 26, 2008]

Sep 24, 2002  SEBI (Issue of Sweat Equity) Regulations, 2002 - [Amended as upto August 27, 2003]

Sep 09, 2002  Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers)(Second Amendment) Regulations 2002

Feb 20, 2002  Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2002
          Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations 2002

Jan 29, 2002  Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers)(Amendment) Regulations 2002

Jan 17, 2002  Securities And Exchange Board Of India (Collective Investments Schemes) (Amendment) Regulations, 2002
Jun 12, 2001  SEBI (Procedure For Board Meetings) Regulations, 2001

Feb 13, 2001  Securities and Exchange Board of India (Foreign Institutional Investors) (Amendment) Regulations, 2001

Sep 15, 2000  SEBI (Foreign Venture Capital Investors) Regulations 2000

Feb 22, 2000  Securities and Exchange Board of India(Portfolio Managers) (Amendment) Regulations, 2000

Feb 07, 2000  The Securities and Exchange Board of India (Debenture Trustees)(Amendment) Regulations, 2000


Sep 30, 1999  Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations 1999

Securities and Exchange Board of India (Underwriters)(Amendment) Regulations 1999

Jul 07, 1999  SEBI (Credit Rating Agencies) Regulations, 1999


Feb 20, 1997  SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997

Dec 09, 1996  SEBI (Mutual Funds) Regulations, 1996

Dec 04, 1996  SEBI (Venture Capital Funds) Regulations 1996
5. APPELLATE TRIBUNAL: ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF APPELLATE TRIBUNAL.

5.1 Establishment of Securities Appellate Tribunals\textsuperscript{132}- The Central Government shall, by notification, establish one or more Appellate Tribunals

\textsuperscript{132} Section 15 K of the SEBI Act, 1992
to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act or any other law for the time being in force. It may specify in the notification the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

5.2 Appeals to the Securities Appellate Tribunal\textsuperscript{133} – any person aggrieved by an order of the Board\textsuperscript{134} made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or by an order made by an adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999; by an adjudicating officer with the consent of the parties.

(3) Every appeal shall be filed within a period of forty-five days\textsuperscript{135} from the date on which a copy of the order made by the Board or the adjudicating officer, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed. The Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

\textsuperscript{133} Section 15T of the SEBI Act, 1992
\textsuperscript{134} Substituted by Securities Laws (Second Amendment) Act 1999. Prior to their substitution, sub section (1) and (2) read as under – “(1) Save as provided in sub section (2) any person aggrieved by an order made by an Adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter. (2) No appeal shall be lie to the Securities Appellate Tribunal from an order made by an Adjudicating officer with the consent of the parties.
\textsuperscript{135}Securities Appellate Tribunal (Procedure) Rules, 2000 Rule 3 limitation to filing appeal.
(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, the parties to the appeal and to the concerned Adjudicating Officer.

(6) The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

An Appellate Tribunal shall hold its sittings\textsuperscript{136} either at Head Office of the Board or at such other place falling within its jurisdiction as it may consider convenient. The proceedings of the Appellate Tribunal shall be conducted in English or Hindi. No appeal, reference, application representation, document or other matters contained in any language\textsuperscript{137} other than English or Hindi, shall be accepted by the Appellate Tribunal, unless the same is accompanied by a true copy of translation thereof in English or Hindi.

5.2.1 Procedure for filing appeals

A memorandum of appeal shall be presented in the form annested (Appendix) to these rules by the Appellant either in person to the Registrar of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to such Registrar. Where the appellant is company a memorandum of appeal may be preferred, - (a) by one or more legal practitioners authorised by such company; or (b) by any of the officers of such company to act as Presenting Officers and every person so authorised may present the appeal before the Appellate Tribunal. Where the appellant is other than a company he may prefer an appeal in person or by his agent or by a duly authorised legal practitioner. An appeal sent by post shall be deemed to have been presented to the Registrar on the day on which it is received in the office of the Registrar. The appeal shall be presented in four sets in a Paper Book alongwith an empty file size envelope bearing full address of the respondent and where the numbers of

\textsuperscript{136} Rule 5 ibid
\textsuperscript{137} Rule 6 ibid
respondents are more than one, and then sufficient number of extra paper books together with empty file size envelope bearing full addresses of each respondent shall be furnished by the appellant.

The Registrar shall endorse on every appeal the date on which it is presented under that rule and shall sign endorsement. If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number. If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar, may allow the appellant such time to rectify the defect as he may deem fit. If the concerned appellant fails to rectify the defect within the time allowed in the Registrar may by order and for reasons to be recorded in writing, decline to register such memorandum of appeal. An appeal against the order of the Registrar shall be made within fifteen days of making of such order to the Presiding Officer concerned in his chamber, whose decision thereon shall be final.

The memorandum of appeal shall be filed by the appellant with the Registrar of the Appellate Tribunal having jurisdiction in the matter. Every memorandum of appeal under section 15T of the Act shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted either in the form of crossed demand draft drawn on a nationalised bank in favour of the Registrar and payable at the station where the Registrar's office is situated or remitted through a crossed Indian Postal Order drawn in favour of the Registrar and payable in Central Post Office of the Station where the Appellate Tribunal is located.

(2) The amount of fee\(^\text{138}\) payable in respect of appeal under section 15T shall be as follows:-

\(^{138}\) Rule 9 of the Securities Appellate Tribunal (Procedure) Rules, 2000
<table>
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<tr>
<th>AMOUNT OF PENALTY IMPOSED</th>
<th>AMOUNT OF FEES PAYABLE</th>
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<tbody>
<tr>
<td>1. Less than rupees ten thousand;</td>
<td>Rs.500</td>
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<tr>
<td>2. Rupees ten thousand or more but less than one lakhs;</td>
<td>Rs.1200</td>
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<tr>
<td>3. Rupees one lakh or more.</td>
<td>Rs.1200 plus Rs.1000 for every additional one lakh of penalty.</td>
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Where an appeal is preferred by a person under section 15T of the Act, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal the amount of penalty imposed by the Adjudicating Officers. However, the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited with the Appellate Tribunal.

5.2.2 Contents of memorandum of appeal

Every memorandum of appeal filed under rule 5 shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such grounds shall be numbered consecutively and shall be typed in double line space on one side of the paper. It shall not be necessary to present separate memorandum of appeal to seek interim order or direction if in the memorandum of appeal, the same is prayed for.

5.2.3 Documents to accompany memorandum of appeal

Every memorandum of appeal shall be triplicate and shall be accompanied with two copies (at least one of which shall be certified copy) of the order of Division Chief against which the appeal is filed. Where the parties to the appeal are being represented by an agent, documents authorising him to act as

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139 Rule 10 ibid
140 Rule 11 ibid
such agent shall also be appended to the appeals. However, where an appeal is filed by a local practitioner, it shall be accompanied by a duly executed Vakalatnama. Where a company is being represented by any of its Officers to act as Presenting Officer before the Appellate Tribunal, the document authorising him to act as Presenting Officer shall be appended to the memorandum of appeal.

A copy of the memorandum of appeal and paper book shall be served on the Board, as soon as they are filed, by the Registrar by registered post. The respondent or the Board may file four complete sets containing the reply to the appeal along with documents in a paper book form with the registry within one month of the service of the notice on him of the filing of the memorandum of appeal. The respondent or the Board shall also endorse one copy of the reply to the appeal along with documents as mentioned in sub-rule (1) to the appellant. The Appellate Tribunal may, in its discretion on application by the respondent or the Board, allow the filing of reply referred to in sub-rule (1), after the expiry of the period referred to therein.

6. Offences by companies\(^\text{141}\).

Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such person shall not be liable any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Furthermore, an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director\(^\text{142}\), manager, secretary or other officer of the company, such director, manager,

\(^{141}\) Section 27 of the SEBI Act, 1992

\(^{142}\) Explanation. - “director” in relation to a firm, means a partner in the firm.
secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

7. POWERS OF CENTRAL GOVERNMENT

7.1 Power to give immunity - Section 24 B of the SEBI Act, 1992 provides that the Central Government, on recommendation by the Board, may grant to the person immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation if such person made a full and true disclosure in respect of the alleged violation. However, no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity. Moreover, that recommendation of the Board under this sub-section shall not be binding upon the Central Government. An immunity granted to a person under may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board. No court inferior to that of a Court of Session shall try any offence punishable under this Act.

7.2 Power to make rules

The Central Government may, by notification, make rules for carrying out the purposes of this Act. In particular, and without prejudice to the generality of

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143 Section 24 B of the SEBI Act, 1992
144 section 29 of the SEBI Act, 1992
the foregoing power, such rules may provide for all or any of the following matters, namely:-

a. the term of office and other conditions of service of the Chairman and the members;
b. the additional functions that may be performed by the Board under section 11;
c. the manner in which the accounts of the Board shall be maintained under section 15;
d. the salaries and allowances and other terms and conditions of service of the Presiding Officers, Members and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;
e. the procedure for the investigation of misbehavior or incapacity of the Presiding Officers, or other Members of the Securities Appellate Tribunal under sub-section (3) of section 15Q;
f. the form in which an appeal may be filed before the Securities Appellate

g. the form and the manner in which returns and report to be made to the Central Government under section 18;
h. any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

In exercise of the powers under section 29 of the act, over the years the Central Government had notified several rules. However, during the year 2006 the Central Government issued a notification dated 7th September, 2006 rescinding several of the said rules earlier promulgated by it from time to time. The rules are to be issued in the shape of “Notification” and published in the Gazette of India. The notified rules are:


2. Amendment to SCR Rules (Oct 06, 2003)

4. Securities and Exchange Board of India Appellate Tribunal (procedure) Rules 1995 (Sep 11, 1995)
10. Securities and Exchange Board of India (Appeal to Central Government) Rules, 1993 (Apr 02, 1993)
14. The Securities Contract (Rules), 1957 (Feb 21, 1957) 

7.3 Powers to issue directions\(^{145}\) - (Section 16) The Central Government can issue directions to Board on question of policy from time to time. The decision of Central Government in this regard shall be final.

\(^{145}\) Section 16 of the SEBI Act, 1992
7.4 Powers to Supersede the Board\textsuperscript{146}. (section 17) The Central Government on the ground of grave emergency or the board is unable to discharge it functions and duties imposed on it or the Board has consistently default in complying with its direction, may supersede the board.

8. Civil Court not to have jurisdiction\textsuperscript{147}. - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

9. Appeal to Supreme Court\textsuperscript{148}. - Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order. If the Supreme Court is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

10. Offences. – Section 24 provides that without prejudice to any award of penalty by the Adjudicating Officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

\textsuperscript{146} Section 17 of the SEBI Act, 1992
\textsuperscript{147} Section 15 Y of the SEBI Act, 1992
\textsuperscript{148} Section 15 Z of the SEBI Act, 1992. Substituted by SEBI (Amendment) Act, 2002. Prior to this substitution Section 15 Z read as under: "15Z. Appeal to High Court. – Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High court within sixty days from the date of commencement of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order : Provided that the High Court may, if it is satisfied that the appellate was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days."
If any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to ten years or with fine, which may extend to twenty-five crore rupees or with both.

It may be noted that punishment can be inflicted by the court of competent jurisdiction on a complaint made to it and if, after trial, the accused is found guilty of an offence be convicted in accordance with the provisions of the Code of CRIMINAL Procedure 1973.

11. Cognizance of Offences by Court\textsuperscript{149} - A compliant can be filed only by SEBI. No one except SEBI is competent to file a complaint. The complaint should be filed with the court of session of competent jurisdiction. No court inferior to that of a Court of Session shall try any offence punishable under the SEBI Act.

The case of Videocon International and Ors. Vs. Securities and Exchange Board of India and Ors\textsuperscript{150} decided by Bombay High Court. The brief facts are:

The complaint filed against commission of offences under Section 24 read with Section 27 of the Securities Exchange Board of India Act, 1992. By virtue of the SEBI (Amendment) Act, 2002 brought into force w.e.f. 29th October, 2002 only the Court of Session could try questioned offences. The cause of action alleged arose prior to date of coming into effect of amended provision. The Question arose for consideration was whether offences ought to be tried by the Chief Metropolitan/Additional Chief Metropolitan/Metropolitan Magistrate in Mumbai and instead to be committed to the Court of Sessions for Greater Mumbai - Held, with amendment to Section 24 by the SEBI Amendment Act, 2002, the sentence under Sub-section (1) as well as Sub-section (2) was enhanced upto ten years and therefore, consequent to whereof the forum for trial of the complaint was changed to the Court of Sessions - Therefore, amendment to Section 26(2) of the SEBI Act not merely procedural in nature and it ought to be held that the

\textsuperscript{149} Section 26 of the SEBI Act, 1992
said amendment is consequential in view of the enlargement of sentence period under Section 24 - In view of Article 20(1) of the Constitution India and Section 6 of the General Clauses it is apparent that all the proceedings and privileges, obligations accrued or of Sections 24 and 26 of the unamended SEBI remained in tact and cannot be disturbed on enforcement of amended Act - SEBI (Amendment) Act, 2002 therefore, prospective in operation and cannot be made retrospective only on the basis of change in forum under Section 26 - Scheme of Sections 24 and 26 of the SEBI Act complimentary to each other and inseparable in operation in as much as Section 24 deals with the imposition of penalty whereas Section 26(2) deals with the trial of such offences upon filing of complaint under Section 26(1). Complaints filed before or after the date of coming into operation of the amending provisions but in respect of the alleged offences taken place prior to the said date are required to be tried by the Court to which they were presented and they are not required to be committed to the Court of Sessions - Petitions/applications allowed

12. Composition of certain offences.

Any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending\textsuperscript{151}. Keeping in the mind the experience of the Securities Exchange Commission (SEC) of the United States of America, SEBI hits upon the idea of making a provision for compounding of offences under the Securities Laws. However, instead of amending the SEBI Act for making necessary provision in the law for compounding of offences, SEBI resorted to the expedient of issuing a scheme in the nature of FAQ for compounding of offences. There were serious doubts in the minds of all those who wanted to opt for compounding about the efficacy of this system, particularly as SEBI had issue only an FAQ in the subject. Realising the shortcomings of the situation, SEBI recast the earlier scheme that was in the nature of a FAQs and instead came

\textsuperscript{151} section 24A, vide amendment Act 2002.
out with a comprehensive Circular\textsuperscript{152} announcing a set of guidelines formalizing the scheme for settlement of disputes through the medium of Consent orders and Composition of offences under SEBI Act, Securities Contracts (Regulation) Act, and Depositories Act. The Circular contains Guidelines for (i) Consent Orders and (ii) For considering requests for composition of offences under SEBI Act, SC(R) Act and Depositories Act.

1. Under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956 (SCRA) and the Depositories Act, 1996, SEBI pursues two streams of enforcement actions i.e. Administrative / Civil or Criminal. Administrative / civil actions include issuing directions such as remedial orders, cease and desists orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court.

2. The Parliament of India has recognised the powers of SEBI to pass consent orders under the SEBI Act and the Depositories Act. This will of the Parliament is apparent from Section 15T of the SEBI Act 1992 and section 23 A of the Depositories Act. Further, section 24A of the SEBI Act, section 23N of the SCRA and section 22A of the Depositories Act permit composition of offences.

3. Consent orders cannot be construed as waiver of statutory powers by the Board. The Board always has the right to proceed for appropriate action if it cannot achieve its objectives through a consent order.

4. US Securities and Exchange Commission settles a substantial number (over 90%) of administrative/civil cases by consent orders. Consent orders may provide flexibility of wider array of enforcement actions which will achieve the twin goals of an appropriate sanction and deterrence without resorting to a long drawn litigation before SEBI/Tribunal/Courts. Passing of consent orders will also reduce regulatory costs and would save time and efforts taken in pursuing

\textsuperscript{152} EFD/ED/Cir-1/2007 dated 20 April 2007
enforcement actions. This effort could more effectively be used for pursuing cases which require the full process of enforcement action and for policy work.

5. Therefore, it has been decided that all appropriate administrative or civil actions e.g. proceedings under sections 11, 11B, 11D, 12(3) and 15I of SEBI Act and equivalent proceedings under the SCRA and the Depositories Act, 1996 and other civil matters pending before Securities Appellate Tribunal (SAT) / courts may be settled between SEBI and a person (party) who may prima facie be found to have violated the securities laws or against whom administrative or civil action has been commenced for such violation. Compounding of offence may cover appropriate prosecution cases filed by SEBI before the criminal courts.

6. As the process of consent order involves exercise of due caution, the proposal of the party may be agreed by following the procedure and also taking into account the factors as set out below at para 11.

7. Commencement and scope of consent Order may be passed at any stage after probable cause of violation has been found. However, in the event of a serious and intentional violation, the process should not be completed till the fact finding process is completed whether by way of investigation or otherwise. Compounding of Offence can take place after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed.

8. Procedure for consent orders where Adjudication Proceedings are pending

a. If the party against whom an adjudication proceeding is pending proposes passing of a consent order, the proposal may be referred to a high powered Committee consisting of a retired judge of a High Court and two other external experts.

b. The Committee will consider the proposal of consent, requisite waivers by the party, the facts and circumstances of the case, material available on records and take into account the factors and guidance as set out below at para 11. Where the Committee finds the terms for passing a
consent order inadequate, it may ask the party to revise the consent terms.

c. The consent terms finalized by the Committee and agreed to by the party shall be forwarded to the Adjudication Officer for passing a suitable order in line with the consent terms.

9 Procedure for consent in other cases

(I) Any person (party) who is notified or who has reasonable grounds to believe that a civil/ administrative proceeding may or will be instituted against him/her, or any party to a proceeding already instituted, may, at any time, propose in writing along with requisite waivers for an offer of consent. All communications in this regard should be addressed to the Division of Regulatory Action, Enforcement Department, SEBI, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051, which would forward the same to the High Powered Committee.

(II) Any person (party) who is notified or who has reasonable ground to believe that a criminal proceeding may or will be instituted against it, may, before filing a criminal complaint by SEBI before any criminal court, propose in writing along with requisite waivers for consent. All communications in this regard should be addressed to the Prosecution Division, Enforcement Department of SEBI at Mumbai, which would forward the same to the high powered Committee.

(III) The Committee will consider the proposal of consent, requisite waivers by the party, the facts and circumstances of the case, material available on record and take into account the factors and guidance as set out below at para 11. Where the Committee finds the terms for passing a consent order inadequate, it may ask the party to revise the consent terms. If the Committee agrees with the proposal, suitable consent terms shall be recommended to a panel of two Whole Time Members, who may pass a suitable order in view of the recommendation of the Committee.

10. The concerned Department in SEBI shall extend all assistance to the Committee and make all records of the case available to the Committee. The Committee shall be assisted by an officer not below the rank of Division Chief.
11. Factors to be considered for consent While considering the proposal of consent from any party, the Committee shall have due regard to the objective of the respective statute, the interests of investors and securities market and factors including but not limited to the following, wherever applicable:

i. Whether violation is intentional.

ii. Party’s conduct in the investigation and disclosure of full facts.

iii. Gravity of charge i.e. charge like fraud, market manipulation or insider trading.

iv. History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past.

v. Whether there were circumstances beyond the control of the party.

vi. Violation is technical and/or minor in nature and whether violation warrants penalty.

vii. Consideration of the amount of investors’ harm or party’s gain.

viii. Processes which have been introduced since the violation to minimize future violations/lapses.

ix. Compliance schedule proposed by the party.

x. Economic benefits accruing to a party from delayed or avoided compliance.

xi. Conditions where necessary, to deter future non-compliance by the same or another party.

xii. Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them.

xiii. Compliance of the civil enforcement action by the accused.

xiv. Party has undergone any other regulatory enforcement action for the same violation.

xv. Any other factors necessary in the facts and circumstances of the case.

12. Waivers

As a condition for consent, the party shall furnish a written waiver from taking any legal proceedings against SEBI concerning any of the issues covered by the consent order.

(I) The party shall waive:
1. all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;
2. the filing of proposed findings of fact and conclusions of law;
3. proceedings before the Board or any officer;
4. all post-hearing procedures; and
5. appeal/review before/by SAT/ courts.

(II) The party shall further waive:

a. such provisions of the Regulations or other requirements of law as may be construed to prevent any officer of SEBI from participating in the preparation of, or advising the Competent Authority as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

b. any right to claim bias or prejudgment by SEBI based on the consideration of or discussions concerning settlement of all or any part of the internal proceedings.

(III) In addition, the party will undertake to waive a plea of limitation for reopening the case, if the party violates the consent order subsequently.

13. It will be the endeavor of the Committee to settle a case before it, subject to the party taking remedial action and on such further consent terms including consent bars or consent penalties as the Committee may find appropriate in the facts of the case. Consent orders may be passed depending on the nature of the violation by either a) admission of the guilt or b) without admitting or denying guilt. Where an order is passed without admitting or denying guilt, such person shall never represent subsequently that he/she is not guilty. In the event such a representation is made, the enforcement process may be reopened.

Consent Order may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved.

14. If the Committee believes that the proposal of consent is not commensurate with the violation or the factors mentioned above are not satisfied or the waivers are not given, it may decline to consider the proposal of the party. In such an event, the Board and the party will both be free to resort to legal recourse as may be available to them under the law.
15 Depending upon the facts and circumstances of the case, gravity of violation/ offence, interest of investors and the securities market and deterrent effect, settlement/ compounding charges have to be paid by the party including legal expenses incurred by SEBI. The Committee will recommend the charges payable by the party for mitigating the violation/ offence taking in to account the factors set out above.

16. Consequence of non-acceptance

(i) If the Committee rejects the proposal of the party, the person making the offer shall be notified of the same and the offer of settlement shall be deemed to be withdrawn.

(ii) The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers.

(iii) SEBI and the Party will be free to resort to legal recourse as may be available to them under law and neither SEBI nor the Party would be entitled to use any information relating to the settlement process in such proceedings.

(iv) Any proceeding which had been kept in abeyance pending the consent process will begin from the stage at which it was kept in abeyance.

17. Settlement before Securities Appellate Tribunal (SAT)/Courts Where a matter is pending before SAT/Court, the same consent process will be undertaken and the draft consent terms recommended by the Committee and approved by the panel of two Whole Time Members will be filed before the SAT/ Court. The SAT/Court may if found fit, pass an order in terms of the consent terms and subject to such further terms as the SAT/ Court may find appropriate in the facts and circumstances of the case.

18. Notice to the party In all notices/ show cause notices sent by SEBI or its officers to the party, it should clearly be mentioned that the party may, if it so desires, propose for suitable order for agreed penalty/ action by consent along with requisite waivers and undertakings.
19. Composition of Offences
The above procedure and factors and waivers shall be applied for considering the proposals of composition of offences under the SEBI Act, SCRA and the Depositories Act, 1996, wherever applicable. Any party who wishes to compound an offence shall file an appropriate application before the court where complaint is pending with a copy addressed to the Prosecution Division, Enforcement Department of SEBI’s Mumbai office (address is given above) which will forward the application/request to be placed before the High Powered Committee. The terms of compounding as recommended by the Committee and approved by the Panel of WTM's would be placed before the court by the Prosecution Division by way of written submissions or application, as appropriate, for passing orders as the court deems fit.

20. Publication
The consent order shall be published through a press release and put on SEBI’s website. In cases where a Party undertakes compliances as per agreed schedule, the concerned department in SEBI shall monitor the same.

21. Enforceability
(i) The consent order shall be binding on the party and in cases where the party undertakes any compliances, it has to comply with the same as per agreed schedule.
(ii) Failure to obey consent orders shall invite appropriate action under the respective statute, revival of the pending administrative/civil action. In this context any proceeding which had been kept in abeyance pending the consent process will revive from the stage where it was kept in abeyance.

22. All information submitted and discussions in pursuance of the consent orders shall be in a fiduciary capacity and may not be released to the public, as it would prejudice SEBI and/or the party.

23. This circular is intended to supplement and not to supplant the SEBI Act, SCRA and the Depositories Act and the Rules and Regulations framed thereunder as also the Guidelines, Circulars and other declarations of policy issued by SEBI from time to time.
24. This Circular is issued with the approval of the Chairman, SEBI, and shall come into force with immediate effect.

Addresses for corresponding:

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<tr>
<th>For consent orders (civil and administrative)</th>
<th>For prosecution cases (criminal)</th>
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<td>Division of Regulatory Action Enforcement Department</td>
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<td>Securities and Exchange Board of India C4A, G Block Bandra Kurla Complex Bandra (East) Mumbai 400 051</td>
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(source : SEBI web site www.sebi.gov.in)

13. CONCLUSION- All modern economies, therefore, recognise the need for sound regulation of securities markets. This is needed not just for proper functioning of these markets, but also for their very survival. It is good regulation that will ensure that markets are safe and perceived to be safe by the public at large. It is good regulation that will ensure that necessary information is available to the public so that they can take informed decisions about investments. It is good regulation that will further ensure that while engines of growth are allowed to move at full speed, there is no space for manipulators in the system. Today securities market regulation has evolved to include three principal objectives: (a) Fair, efficient and transparent markets; (b) Investor protection; (c) Reduction of systemic risk. I am happy to say that SEBI is
shoudering the responsibility in all these three areas with great deal of
efficiency and commitment.153

Thus the SEBI has issued various regulations in respect of each of he
intermediaries such as stock brokers and sub broker, share transfer agents and
registrars to an issue, banker to an issue, debenture trustees, merchants
bankers, underwriters portfolio manager, depositaries, participants, custodian
of securities, foreign institutional investors, credit rating agencies, venture
capital funds, collective investment schemes including mutual funds, etc to
regulate and ensure fair play by these intermediaries. SEBI has also issued
regulations to prohibit insider trading and to regulate substantial acquisition of
shares and take over of companies. All these rules and regulations, circulars
and guidelines serve the objective of affording necessary protection to the
investors.

Over and above this, various penalties and adjudications which could be
imposed on persons including the various intermediaries who are held to have
contravened provisions of the enactment and committed defaults. The Act thus
provides sufficient deterrents to those who may indulge in defaults and
illegalities and malpractices on the market to the detriment of the investors.

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153 Text of the Hon’ble Prime Minister’s speech on the occasion of inauguration of SEBI
Bhavan on October 06, 2006